

either on the date of your hearing or at an earlier time at your request, and present additional evidence;

(4) You may present witnesses and question any witnesses at the hearing;

(5) You may waive your right to appear at the hearing. If you do not appear at the hearing, the disability hearing officer will prepare and issue a written reconsidered determination based on the information in your case file.

(c) *Case preparation.* After you request reconsideration, your case file will be reviewed and prepared for the hearing. This review will be conducted in the component of our office (including a State agency) that made the initial or revised determination, by personnel who were not involved in making the initial or revised determination. Any new evidence you submit in connection with your request for reconsideration will be included in this review. If necessary, further development of the evidence, including arrangements for medical examinations, will be undertaken by this component. After the case file is prepared for the hearing, it will be forwarded by this component to the disability hearing officer for a hearing. If necessary, the case file may be sent back to this component at any time prior to the issuance of the reconsidered determination for additional development. Under paragraph (d) of this section, this component has the authority to issue a favorable reconsidered determination at any time in its development process.

(d) *Favorable reconsideration determination without a hearing.* If all the evidence in your case file supports a finding that you are now disabled, either the component that prepares your case for hearing under paragraph (c) or the disability hearing officer will issue a written favorable reconsideration determination, even if a disability hearing has not yet been held.

(e) *Opportunity to submit additional evidence after the hearing.* At your request, the disability hearing officer may allow up to 15 days after your disability hearing for receipt of evidence which is not available at the hearing, if:

(1) The disability hearing officer determines that the evidence has a direct bearing on the outcome of the hearing; and

(2) The evidence could not have been obtained before the hearing.

(f) *Opportunity to review and comment on evidence obtained or developed by us after the hearing.* If, for any reason, additional evidence is obtained or developed by us after your disability hearing, and all evidence taken together can be used to support a reconsidered determination that is unfavorable to you with regard to the medical factors of eligibility, we will notify you, in writing, and give you an opportunity to review and comment on the additional evidence. You will be given 10 days from the date you receive our notice to submit your comments (in writing or, in appropriate cases, by telephone), unless there is good cause for granting you additional time, as illustrated by the examples in § 404.911(b). Your comments will be considered before a reconsidered determination is issued. If you believe that it is necessary to have further opportunity for a hearing with respect to the additional evidence, a supplementary hearing may be scheduled at your request. Otherwise, we will ask for your written comments on the additional evidence, or, in appropriate cases, for your telephone comments.

[51 FR 301, Jan. 3, 1986]

§ 404.917 Disability hearing—disability hearing officer's reconsidered determination.

(a) *General.* The disability hearing officer who conducts your disability hearing will prepare and will also issue a written reconsidered determination, unless:

(1) The disability hearing officer sends the case back for additional development by the component that prepared the case for the hearing, and that component issues a favorable determination, as permitted by § 404.916(c);

(2) It is determined that you are engaging in substantial gainful activity and that you are therefore not disabled; or

(3) The reconsidered determination prepared by the disability hearing officer is reviewed under § 404.918.

(b) *Content.* The disability hearing officer's reconsidered determination will give the findings of fact and the reasons for the reconsidered determination. The disability hearing officer must base the reconsidered determination on the preponderance of the evidence offered at the disability hearing or otherwise included in your case file.

(c) *Notice.* We will mail you and the other parties a notice of reconsidered determination in accordance with § 404.922.

(d) *Effect.* The disability hearing officer's reconsidered determination, or, if it is changed under § 404.918, the reconsidered determination that is issued by the Associate Commissioner for Disability Determinations or his or her delegate, is binding in accordance with § 404.921, subject to the exceptions specified in that section.

[51 FR 302, Jan. 3, 1986, as amended at 71 FR 10428, Mar. 1, 2006; 73 FR 76943, Dec. 18, 2008]

§ 404.918 Disability hearing—review of the disability hearing officer's reconsidered determination before it is issued.

(a) *General.* The Associate Commissioner for Disability Determinations or his or her delegate may select a sample of disability hearing officers' reconsidered determinations, before they are issued, and review any such case to determine its correctness on any grounds he or she deems appropriate. The Associate Commissioner or his or her delegate shall review any case within the sample if:

(1) There appears to be an abuse of discretion by the hearing officer;

(2) There is an error of law; or

(3) The action, findings or conclusions of the disability hearing officer are not supported by substantial evidence.

NOTE TO PARAGRAPH (a): If the review indicates that the reconsidered determination prepared by the disability hearing officer is correct, it will be dated and issued immediately upon completion of the review. If the reconsidered determination prepared by the disability hearing officer is found by the Associate Commissioner or his or her delegate to be deficient, it will be changed as described in paragraph (b) of this section.

(b) *Methods of correcting deficiencies in the disability hearing officer's reconsid-*

ered determination. If the reconsidered determination prepared by the disability hearing officer is found by the Associate Commissioner for Disability Determinations or his or her delegate to be deficient, the Associate Commissioner or his or her delegate will take appropriate action to assure that the deficiency is corrected before a reconsidered determination is issued. The action taken by the Associate Commissioner or his or her delegate will take one of two forms:

(1) The Associate Commissioner or his or her delegate may return the case file either to the component responsible for preparing the case for hearing or to the disability hearing officer, for appropriate further action; or

(2) The Associate Commissioner or his or her delegate may issue a written reconsidered determination which corrects the deficiency.

(c) *Further action on your case if it is sent back by the Associate Commissioner for Disability Determinations or his or her delegate either to the component that prepared your case for hearing or to the disability hearing officer.* If the Associate Commissioner for Disability Determinations or his or her delegate sends your case back either to the component responsible for preparing the case for hearing or to the disability hearing officer for appropriate further action, as provided in paragraph (b)(1) of this section, any additional proceedings in your case will be governed by the disability hearing procedures described in § 404.916(f) or if your case is returned to the disability hearing officer and an unfavorable determination is indicated, a supplementary hearing may be scheduled for you before a reconsidered determination is reached in your case.

(d) *Opportunity to comment before the Associate Commissioner for Disability Determinations or his or her delegate issues a reconsidered determination that is unfavorable to you.* If the Associate Commissioner for Disability Determinations or his or her delegate proposes to issue a reconsidered determination as described in paragraph (b)(2) of this section, and that reconsidered determination is unfavorable to you, he or she will send you a copy of the proposed reconsidered determination with an explanation of the reasons for it,